

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE THE HONORABLE WILLIAM G. COBB, MAGISTRATE JUDGE

4 UNITED STATES OF AMERICA, :  
5 Plaintiff, : IN EQUITY NO. C-125-ECR  
6 vs. : Subproceedings:  
7 WALKER RIVER IRRIGATION : C-125-B and C-125-C  
8 DISTRICT, et al., : 3:73-CV-0125-ECR-WGC  
9 Defendants. : 3:73-CV-0127-ECR-WGC  
10 : 3:73-CV-0128-ECR-WGC  
11 :  
12

13 TRANSCRIPT OF STATUS CONFERENCE  
14 MARCH 13, 2012

15 RENO, NEVADA

16 APPEARANCES:

17 Counsel Present: SUSAN SCHNEIDER  
18 WES WILLIAMS, JR.  
19 NICO DePAOLI  
20 GORDON DePAOLI  
21 DALE FERGUSON  
22 THERESE URE  
23 GEORGE BENESCH  
24 SIMEON HERSKOVITS

25 Counsel Appearing Telephonically: MARTA ADAMS  
KAREN PETERSON  
SIMEON HERSKOVITS  
STACEY SIMON  
MICHAEL NEVILLE

Court Reporter: Donna Davidson, RDR, CRR, CCR 318  
Official Reporter  
400 South Virginia Street  
Reno, Nevada 89501  
(775) 329-0132

1 RENO, NEVADA; MARCH 13, 2012; 1:33 P.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 THE COURT: Good afternoon, everyone. Please be  
6 seated. Thank you.

7 THE CLERK: This is the date and time set for a  
8 status conference in case numbers 3:73-CV-125-ECR-WGC,  
9 3:73-CV-127-ECR-WGC, and 3:73-CV-0128-ECR-WGC, United States  
10 of America versus Walker River Irrigation and others.

11 Counsel present in the courtroom are Therese  
12 Ure, George Benesch, Nico DePaoli, Dale Ferguson, Gordon  
13 DePaoli, Wes Williams, Jr., and Susan Schneider.

14 Counsel present telephonically are Marta  
15 Adams, Karen Peterson, Simeon Herskovits, Michael Neville,  
16 and Stacey Simon.

17 THE COURT: Thank you, Ms. Cotter.

18 If we could just do -- preliminarily go over who  
19 is here, and tell me who you represent again, so I've got my  
20 cheat sheet right.

21 MR. WILLIAMS: Wes Williams, Jr., representing  
22 the Walker River Paiute Tribe.

23 MS. SCHNEIDER: Susan Schneider representing the  
24 United States.

25 MR. DePAOLI: Gordon DePaoli, representing the

1 Walker River Irrigation District.

2 MR. FERGUSON: Dale Ferguson representing the  
3 Walker River Irrigation District.

4 MR. DePAOLI: Nico DePaoli representing the  
5 Walker River Irrigation District.

6 MS. URE: Therese Ure representing Circle Bar N  
7 Ranch and Mica Farms.

8 MR. BENESCH: George Benesch representing Lyon  
9 County.

10 THE COURT: You're hiding over there in the  
11 corner, Mr. Benesch. I didn't see you.

12 Thank you, all. Two things I want to bring to  
13 the parties' attention in trying to get up to speed on  
14 this case.

15 First, I notice that one of the named  
16 defendants was George Swainston. And I just want to alert  
17 everyone who doesn't know that George Swainston was my  
18 former partner. He passed away, I'm guessing now, about  
19 four or five years ago.

20 I don't see that that presents any type of  
21 conflict. I don't really have -- I don't take cases of  
22 members of the firm. George hasn't been a member of the  
23 firm for even longer than that. But I just wanted to  
24 bring it to everyone's attention.

25 The other one is one of the attorneys in this

1 case is Louis Test of Hoffman, Test, Guinan & Collier.

2 Louis Test, and probably the firm, are on my  
3 refusal list because I represented the firm in a matter  
4 and have been close personal friends with Louis Test for  
5 50 years.

6 I understand that Mr. Test is going to be  
7 withdrawing from representation of the parties in this  
8 case and that Mr. Benesch has apparently been contacted  
9 about possibly representing the four or five entities that  
10 Mr. Test represents now.

11 Mr. Benesch, can you shed any light on that?

12 MR. BENESCH: That's correct. I did have a  
13 discussion with Mr. Test the other day on the subject.

14 THE COURT: But there's been no substitution  
15 affected yet?

16 MR. BENESCH: That's correct.

17 THE COURT: All right. I don't know if anyone  
18 has any objection to my proceeding on this case until that  
19 technical conflict is resolved. If so, would you speak up at  
20 this time.

21 All right. Thank you. If you don't mind my  
22 drinking water, I've got some things going on here where I  
23 need to keep hydrated.

24 I have received the United States of America's  
25 list of proposed agenda items. I appreciate the work that

1 went on with that list and the work of counsel on that as  
2 well.

3 And as you can see, I try to come up to speed  
4 on all these issues that are presented by this agenda.

5 Ms. Schneider, do you wish to proceed? What's  
6 the standard protocol at these events?

7 MS. SCHNEIDER: Usually what I've done is walk  
8 through the agenda with the Court as the Court wishes us to  
9 proceed. And then when there are matters that other  
10 attorneys need to be heard on, then I've just sat back until  
11 the next item comes up.

12 THE COURT: All right. And you know, Counsel, I  
13 think with all these documents, why don't you all just sit  
14 down for this proceeding and don't feel compelled to stand.  
15 I appreciate the recognition, but I think it might be more  
16 convenient to everybody. And we also might get a better  
17 record with the audible recording.

18 Well, Ms. Schneider, why don't you just -- why  
19 don't we just proceed through your agenda item by item,  
20 and if something comes up, we'll be discussing those, I  
21 presume.

22 MS. SCHNEIDER: Yes, Your Honor. The first item  
23 on the agenda is the status of service in C-125-B. And some  
24 of this is reiterating what I think we've told the Court  
25 before and put into our -- the status report that we filed in

1 January. But I think it's helpful to start out with a  
2 summary of where we are in C-125-B.

3 The service for mail -- the service by mail with  
4 a request for waiver of personal service was substantially  
5 complete at the end of 2008. But cleanup has continued since  
6 then. Personal service for persons and entities that did not  
7 waive service continued into 2009 and was substantially  
8 complete by 2010, with some lingering serves to be completed.

9 Our last collection of returns of personal  
10 service was filed in November of 2011.

11 At this point, there are several hundred  
12 notices that we've gotten of transfers. But we also  
13 suspect there have been other sales that have occurred  
14 where people haven't bothered to notify the Court.

15 We have filed 16 service reports at this  
16 point. We have signed orders in 15 of them. And the  
17 proposed order for service report 16 is before the Court.

18 We have a number of dismissals and some  
19 notices of appearances and address changes that we have  
20 accumulated since filing the Sixteenth Report. And we  
21 would be putting those into a Seventeenth Report.

22 We had held off on filing the Seventeenth  
23 Report because it seemed to us that the resolution of the  
24 Sixteenth Report might affect what we put into the  
25 Seventeenth Report.

1 But depending on what the Court does today, we  
2 would be prepared to start to go ahead and put together  
3 the Seventeenth Report, even if we hold some of the issues  
4 in the Sixteenth Report aside. I don't know what the  
5 Court's going to do with that today.

6 THE COURT: The Sixteenth Report, as I  
7 understand it, has to determine whether certain entities or  
8 persons should be dismissed because they're not -- they're  
9 either not municipal users or they're not groundwater users  
10 or something like that?

11 MS. SCHNEIDER: That's correct, Your Honor.

12 THE COURT: And would the Rosachi, Walker  
13 General be contained in the Seventeenth Report or the  
14 Sixteenth?

15 MS. SCHNEIDER: Well --

16 THE COURT: If we went ahead with them.

17 MS. SCHNEIDER: That's the next item on the  
18 agenda. And that is the request for removal from the mailing  
19 list; one by Mary Rosachi, and the other one by Walker  
20 General.

21 It causes me to note that for some reason both  
22 of these defendants are on the certificate of service  
23 despite the Magistrate Judge McQuaid's order in February  
24 of 2008. It's document 1300, that --

25 THE COURT: Only the attorneys get served.

1 MS. SCHNEIDER: Pardon me?

2 THE COURT: Only the attorneys get served and  
3 only electronically?

4 MS. SCHNEIDER: That's correct. That there was  
5 to be some restriction and service to the primary parties  
6 until service was finished.

7 So as a practical matter, they shouldn't have  
8 been on the list and receiving materials at this point.

9 So there are a couple of options for the  
10 Court. One would be to just simply omit them from service  
11 now until all the other -- until we retreat from document  
12 1300; that is, we put it to the side and try to figure out  
13 what broader service has to be made once the preliminary  
14 case management orders -- case management issues are  
15 resolved.

16 What I should also say is that Mrs. Rosachi  
17 filed a notice of appearance. So she would be getting  
18 notice of possible future use of e-serve.

19 The other thing is that for Walker General,  
20 they had waived service and disclaimed an interest. And  
21 they are one of the persons and entities that's caught up  
22 in the pending issues of -- set out in report number 16.

23 But I also note from a footnote in our filing  
24 in our report 16 that it was our assessment that Walker  
25 General was really more akin to being a domestic user, and



1 we had intended to ask the Court to dismiss them.

2 So that's where we stand with those two right  
3 now.

4 THE COURT: Now, I understand Walker River  
5 Irrigation District has some concern about the proposed  
6 dismissals called for by the Sixteenth Report and order.  
7 Should we turn to that at this time, Ms. Schneider?

8 MS. SCHNEIDER: I think we can. It's not Walker  
9 River Irrigation District that filed something, it was  
10 actually the --

11 THE COURT: Oh, the --

12 MS. SCHNEIDER: -- it was the U.S. Board of  
13 Water Commissioners.

14 THE COURT: Water Commissioners.

15 MS. SCHNEIDER: The pending issue that we put  
16 before the Court in --

17 MR. DePAOLI: Excuse me, Your Honor. Gordon  
18 DePaoli on behalf of the Walker River Irrigation District.

19 I did want to comment on the item 1-B on the  
20 agenda, the Mary Rosachi and Walker General, if I could,  
21 before you go to the next one.

22 THE COURT: Well, I wasn't done with the first  
23 one, A or B, 1-A or B, but if --

24 MR. DePAOLI: Oh, I'm sorry.

25 THE COURT: -- want to -- if it's an appropriate

1 time to add it in, go ahead.

2 MR. DePAOLI: Well, what I was going to add to  
3 that, Your Honor, is it seems to me that it would make sense  
4 to expand Judge McQuaid's order, which is docket number 1300.

5 At least the way I read the order, it was  
6 written to apply only to the clerk and not necessarily to  
7 attorneys appearing for parties in the case. And I think  
8 that if perhaps that order was expanded so that all of us  
9 could simply rely on the attorneys who have appeared to  
10 receive service electronically until we get further down the  
11 road with some of these other issues, then perhaps issues  
12 like what Ms. Rosachi has and Walker General could be avoided  
13 for a while.

14 It does not -- and I noted that Ms. Rosachi  
15 basically said she'd like to be deleted for now but if she  
16 decided that she wanted to be back on, she would let  
17 everybody know. And I'm not sure in a case like this one  
18 that's going to work very well. So maybe we could cover  
19 it that way with Judge McQuaid's order for now and then  
20 see where we are later.

21 THE COURT: Well, what about the proposal that  
22 Ms. Schneider has, that we just go ahead and remove them from  
23 the mailing list, and they shouldn't have been on there to  
24 begin with, and we just follow Judge McQuaid's order. It  
25 wouldn't need any amendment and that the only -- clerk's

1 office is limiting its service, and expand that to the  
2 attorneys involved in the case, only to those who are on that  
3 document 1300 list. How would that work?

4 MR. DePAOLI: That would be fine, Your Honor.

5 THE COURT: Ms. Schneider, do you want to  
6 include that in a revised order on Sixteenth Report, and we  
7 could -- rather than waiting for the Seventeenth Report, and  
8 we can take care of that issue?

9 MS. SCHNEIDER: I will do that.

10 THE COURT: All right.

11 Does anyone else have anything to say about the  
12 issue about Rosachi and Walker General?

13 And I think what we would do down the road when  
14 we get to this issue about the electronic notification and so  
15 forth that, at that time, she can opt in or opt out.

16 But maybe somebody could give Ms. Rosachi and  
17 Walker General a call, just to tell them what we've done here  
18 today, so they have some better understanding. Tell them  
19 we've relieved them from being on the mailing list and they  
20 shouldn't be getting anything. But they will be getting  
21 something in the future, who knows when, from the Court about  
22 electronic service and filing in this case.

23 MS. SCHNEIDER: Okay. If I could, Your Honor.  
24 I'll send them a letter. Would that be better?

25 THE COURT: I think that's an excellent idea.

1 MS. SCHNEIDER: We'll send them a letter. And  
2 that way there will be a record of what we told them.

3 THE COURT: All right. Does that then take care  
4 of agenda items 1-A and B?

5 MS. SCHNEIDER: I believe so, Your Honor.

6 And then that would bring us to the Sixteenth  
7 Report of the United States and how to resolve that issue  
8 at this point.

9 The pending issue is whether the Court --  
10 there are actually two questions. Whether the Court  
11 intends that the persons and entities that we've  
12 identified in that report should be parties to the  
13 question -- excuse me, parties to the case.

14 First of all, the question is whether the  
15 Court -- whether these persons and entities fit within any  
16 of the nine categories of persons and entities identified  
17 in the case management order; and, secondly, whether the  
18 Court intended in any way to include these persons and  
19 entities. And basically what -- the case management order  
20 requires service in California on groundwater users who --  
21 on municipal users of groundwater.

22 These persons and entities aren't technically  
23 municipal users. Some categories within various offices  
24 have classified them at quasi-municipal. And that's why  
25 we've put them in as -- out of an abundance of caution.

1 But they're very, very small users.

2 And, in fact, in our Sixteenth Report, we  
3 noted that there were five of them that, as we looked  
4 closer at them, we thought that they really were much more  
5 like domestic users but that they all seemed to be small  
6 users.

7 So we put the issue out some time ago to the  
8 primary parties. We tried to work out -- get an  
9 understanding about what various positions were, as to  
10 whether they were part of the case management order,  
11 whether they should be in or not, and we got no -- we had  
12 no resolution on the matter, and so we filed the Sixteenth  
13 Report.

14 And I tried to -- the best that I could, to  
15 identify the various positions that we had heard at the  
16 time, concerns expressed by Walker River Irrigation  
17 District in a couple of e-mails, and concerns expressed by  
18 Mono County in its e-mails. Mono County and I think,  
19 also, California are taking the position that these people  
20 are not municipal users. And so the issue -- that's the  
21 issue presented in Report 16.

22 When we were here last, the Court directed me  
23 to prepare a proposed order that would dismiss them. And  
24 we did that and then served it, as well, on what I believe  
25 is 15 persons and entities total.

1                   We then -- the Court had designated a period  
2 of time for any parties to respond if they had concerns  
3 with the order. And the U.S. Board filed a request asking  
4 that this matter be addressed at this particular status  
5 conference.

6                   And then we responded expressing some concerns  
7 about the U.S. Board's moving into filing -- actually  
8 filing a substantive filing, as opposed to dealing with  
9 anything that would be more procedural and our concern  
10 because they're not a party -- among other things, that  
11 they're not a party to the case.

12                  THE COURT: Ms. Peterson, do you wish to address  
13 those comments?

14                  MS. PETERSON: Yes, Your Honor, I do. Thank  
15 you. And I apologize that I'm not there in person today.

16                  And, also, Mr. Jim Shaw, the Water Master, I  
17 believe he's in the audience too. He would have more  
18 information on the facts that were set forth about the 15  
19 persons or entities that are listed in our request.

20                  But Judge Reed's 1990 order in the C-125 case  
21 says that the Board acts as a special master in C-125  
22 cases. And historically, and as I documented in the  
23 request that we filed, document 1693, the Board has filed  
24 documents or pleadings in this proceeding. No objections  
25 had been made -- to my knowledge, no objections had been

1 made to the filings. And to my knowledge, special masters  
2 can file documents with the Court.

3 I don't know of any prohibition or order in  
4 this case that says the Board acting as a special master  
5 cannot file pleadings with the Court. I assume the Court  
6 gives the pleadings, you know, filed by the Board, the  
7 merit or the credence that the Court deems appropriate.

8 So in the request that the Board filed, the  
9 Board provided information to the Court that hadn't been  
10 provided by the main parties to this action. It was --

11 THE COURT: Ms. Peterson, let me -- if I may  
12 interrupt you for a second.

13 What you've just addressed is something that  
14 Ms. Schneider also mentioned about whether Walker River Board  
15 of Commissioners, Water Commissioners has what we might call  
16 standing in this action.

17 And I went back and read that 1990 order, as did  
18 you, and it -- they may not be a party in this case, but they  
19 are -- they certainly are what might be called a player. And  
20 it seems to me that we should receive filings, whether it's  
21 substantive or procedural, from your client in this action.

22 And I would ask -- I'll ask the parties to  
23 address that issue. Does anyone else besides Ms. Schneider  
24 have a comment on this subject about the Board of Water  
25 Commissioners? Yes?

1 MR. WILLIAMS: Yes, Your Honor. Wes Williams,  
2 Jr. --

3 THE COURT: Mr. Williams.

4 MR. WILLIAMS: -- Walker River Paiute Tribe.  
5 This is an issue that the Tribe has had a concern about for a  
6 number of years. It had filed some pleadings in the past  
7 regarding the representation of the Board and the same  
8 attorney representing the parties in the case. And because  
9 of that, the Court entered its order --

10 THE COURT: Separating --

11 MR. WILLIAMS: -- separating the two.

12 But it did note that the Board is a  
13 quasi-judicial entity and is subject to the rules of judicial  
14 conduct.

15 And based on that, I think there's a -- there's  
16 a line there somewhere, and we're not exactly sure where it's  
17 at.

18 THE COURT: This case has quite a few lines that  
19 are blurred.

20 MR. WILLIAMS: Yes.

21 THE COURT: I found that out in a hurry.

22 MR. WILLIAMS: In asking about that issue, we  
23 did raise it with the Board just recently. There was a Board  
24 of Water Commissioners meeting last week where the Tribe had  
25 submitted a letter asking about this specific issue and



1     trying to get the views of the Board on this issue.

2                     We have not received a response from that yet.  
3     We understand that -- we're hoping that we will be getting  
4     something soon.

5                     THE COURT: Was the question that you posed to  
6     them about whether they are a party or should be a party or  
7     not? Or is it on something else?

8                     MR. WILLIAMS: There were a number of different  
9     issues. But that was part of it. And basically a general  
10    question of what they viewed their role as.

11                    And what prompted the letter was in a proceeding  
12    before the state engineer that's going on right now, that the  
13    Board had submitted a pleading to the state engineer arguing  
14    a position against the application. And because of that, it  
15    appeared that they were basically taking sides on that  
16    application. And if they're doing that, then they are  
17    violating the Code of Judicial Conduct, where they're  
18    supposed to be an impartial party -- or impartial entity.

19                    So if that's the case --

20                    THE COURT: Well, that's a different issue,  
21    though. The issue is whether we should allow them in this  
22    case to file documents and address issues that they deem  
23    relevant to the case.

24                    And I note that they've been served sometimes,  
25    and sometimes they haven't. And I note sometimes that they

1 have actually served documents, some without objection. And  
2 I just wanted to clarify their role as a colorable party to  
3 this case, however we want to call it.

4 And my inclination is to allow Walker River  
5 Board of Water Commissioners to have that status in this  
6 case. Not a party. But I'm just saying that I'd like them  
7 to be served in this action. And by the -- under Judge  
8 McQuaid's order, to add them to the list and to allow them to  
9 file documents.

10 Now, if they have some constraints on them on  
11 how they file, they're not supposed to take positions, that's  
12 a different issue, and somebody can object to that.

13 But I just want to procedurally clarify that  
14 let's get this issue out of the way and get them into this  
15 case for filing and non-filing purposes.

16 MS. SCHNEIDER: Your Honor, they are on the  
17 e-file list, and they are served. And that's been  
18 traditional. I don't think they have not been served with  
19 documents.

20 MR. WILLIAMS: Yes, I agree with that.

21 THE COURT: Well, I was looking through -- I  
22 think Ms. Griffin and I were trying to find, the other day --  
23 or somebody and I were looking, and we couldn't -- there was  
24 some service list that they were not on there.

25 MS. SCHNEIDER: They were at one point

1 represented by Linda Bowman, not Karen Peterson.

2 THE COURT: Well, the list I was looking at --  
3 and I'm sorry I can't identify right now, the certificate of  
4 service had the parties whom the attorneys represented, and  
5 it didn't include them.

6 MS. SCHNEIDER: I'm --

7 MS. PETERSON: Your Honor?

8 THE COURT: Yes.

9 MS. PETERSON: This is Karen Peterson. I think  
10 from maybe the U.S.'s perspective, the issue, when you ask  
11 the parties to file something, they are taking the position  
12 that the U.S. Board is not a party, and so we're not entitled  
13 to file something.

14 And so I don't know if you need to say in the  
15 future, you know, parties and the U.S. Board, or how that  
16 should be clarified. But I -- you know, if you say, like you  
17 did in your minute order, that the U.S. is supposed to get  
18 together with the major plaintiff parties and major defendant  
19 parties to go over the agenda, they would not include us in  
20 that discussion because they don't think that we're a party.

21 MS. SCHNEIDER: There is a -- there are --  
22 there's an express statement in more than one place that the  
23 U.S. Board is not a party.

24 THE COURT: And maybe where I got confused is  
25 that where you list the service by mail, you had Mr. Shaw

1 getting served. And I didn't notice Ms. Peterson's name at  
2 that time. But I see that she's on the e-mail list.

3 MS. PETERSON: Everything that's filed with the  
4 Court I get.

5 THE COURT: Well, maybe we just leave that to  
6 rest right now, until somebody raises the issue of whether  
7 you have standing or the ability to file something on a  
8 particular matter. Does that issue exist at the present  
9 time?

10 MR. WILLIAMS: No, Your Honor. Depending on how  
11 the Board responds to the Tribe's letter, then we'll decide  
12 if we need to bring something up with the Court or not.

13 THE COURT: Are there any other motions or  
14 issues --

15 MS. SCHNEIDER: I think it --

16 THE COURT: -- pending?

17 MS. SCHNEIDER: Well, I think it does exist at  
18 this point. Let me mention a couple things here.

19 First of all, procedurally, on page 14 of the  
20 case management order, it states that any party may move to  
21 modify the case management order.

22 The U.S. Board's not a party to any portion of  
23 the proceedings, whether it's C-125-B -- C-125, or  
24 subproceedings B or C. And then page 14 of the case  
25 management order also sets out a standard of good cause shown

1 to modify the case management order.

2 And there's been -- that -- assuming that the  
3 U.S. Board has -- is able to file anything here, which  
4 they shouldn't be doing because they're not a party, they  
5 haven't met or even addressed the standards in their  
6 filing.

7 The other thing is that -- because what they  
8 seem to be doing here, I think, is asking the Court to  
9 amend the case management order and require service on  
10 some category of persons or entities that seem to be  
11 represented, to some extent, by the persons and entities  
12 identified by Service Report Sixteen.

13 It seems to me that if -- because I don't  
14 think anybody is -- I haven't heard anyone yet say that  
15 they believe that the persons and entities identified in  
16 Report Sixteen fit within the boundaries of the case  
17 management order as municipal providers of groundwater.

18 And if that is the case, then the next  
19 question would be whether there should be some sort of  
20 modification of the case management order to do that. But  
21 I don't see that that's actually been addressed.

22 The other thing is that I also noted that the  
23 15 persons and entities involved in Report Sixteen were  
24 not served with the U.S. Board's filing. We served them.  
25 And so the last I heard from anyone was receiving the

1 order that we filed with the Court proposing their  
2 dismissal.

3 And so that concerns me. So here we have  
4 their -- the Board's not a party, it didn't file a motion  
5 and hasn't met the standard, and it hasn't served anyone.

6 It's also -- moving to a second issue. I  
7 would like to hear from the Board about its authority to  
8 make this filing and that it should identify how this  
9 decision was made; that is, to identify all the members of  
10 the U.S. Board with whom this filing was discussed and  
11 identify who approved filing this -- making this filing.

12 Because, among other things, the Tribe is  
13 actually a member of the Board. And it's a minority  
14 member and, I suspect, has been outvoted pretty  
15 consistently over the years.

16 But I'd like to know whether the -- you know,  
17 which members of the Board this particular action was  
18 discussed with and who approved its filing.

19 THE COURT: Well, we're not going to get into  
20 that today. I mean, I don't know that that's the issue that  
21 I'm trying to raise here. I'm trying to talk about a  
22 procedural mechanism where we ensure that the Walker River  
23 Board of Water Commissioners gets served and that they serve  
24 people and have status in this case to file documents.

25 Whether they should or have not filed the

1 document is a beef that you have with the Board itself. And  
2 whether you represent the Tribe, or Mr. Williams does, or  
3 somebody can address it through those channels.

4 I'm just talking about today the service -- or  
5 including the Walker River Board of Water Commissioners in  
6 the chain of what's going on in this case. And I was kind  
7 of surprised that it hasn't been raised before this date.

8 When you talk about the case management order,  
9 I'm looking at page 8, under lines 18 through 26, Judge  
10 Reed stated that the magistrate judge shall receive  
11 recommendations of the parties for procedures for  
12 scheduling and for the efficient management of the  
13 litigation given the number of parties to the case. Such  
14 procedures may include the use of common counsel, special  
15 procedures for service of pleadings, or other mechanisms  
16 deemed likely to reduce the burdens on the parties and the  
17 court in a case of this magnitude.

18 And for the time being, unless something comes  
19 up that they are absolutely without standing, my  
20 suggestion is that we include the Walker River Board of  
21 Water Commissioners -- or the U.S. Board, I keep calling  
22 them Walker Board, the U.S. Board of Water Commissioners  
23 in the service list or loop.

24 Let me ask first Ms. Peterson whether she has  
25 any objection to this approach?

1 MS. PETERSON: No, Your Honor.

2 THE COURT: Do you think it's a wise idea or not  
3 a wise idea to do this? And I don't mean to put you on the  
4 spot. You can be critical of me. If you don't think we  
5 ought to be going down this slippery slope, let me know.

6 MS. PETERSON: Your Honor, historically we have  
7 tried to provide input and information to the Court as we  
8 thought it was important for the Court to receive. And so I  
9 think that's probably important on a going-forward basis.

10 But we just need to know. Because we have  
11 provided that information in the past. It hasn't been  
12 objected to. The judge -- I mean, in the other case, the C  
13 case, document 210, the judge specifically relates that the  
14 U.S. Board of Water Commissioners filed a pleading, a  
15 substantive pleading in that case, and goes through and  
16 summarizes all the parties' position and the U.S. Board's  
17 position.

18 So I think Judge Reed thinks it's important that  
19 we're here.

20 THE COURT: All right. That is going to be the  
21 order of the Court going forward. The U.S. Board of Water  
22 Commissioners has -- I'm going to call it standing to serve  
23 documents in these actions and should be served with matters  
24 in these actions and may file, whether it's called a pleading  
25 or a report or status position or whatever, in all of the



1 cases. So that will be going forward.

2 Now we need to turn to the issue about the  
3 proposal of the U.S. Attorney about dismissing certain  
4 parties in this action under the Sixteenth Report.

5 Ms. Schneider, I have received the United  
6 States' report on this matter.

7 And I've reviewed the document you filed,  
8 Ms. Peterson, where you expressed concern that you don't  
9 want to have someone objecting as to finality down the  
10 road. I recognize that concern; however, I think that we  
11 will proceed with the dismissal of those entities  
12 identified by the U.S. Government, the United States of  
13 America.

14 Ms. Schneider, does that sufficiently address  
15 the issue about the nine service categories and the plans,  
16 whether these parties fit in any of those nine groups?

17 MS. SCHNEIDER: Yes, it does, Your Honor.

18 THE COURT: All right. Now, is that going to be  
19 also included in this revised report on the Sixteenth Report?

20 MS. SCHNEIDER: I will prepare a revised order  
21 for the Court for Report 16 --

22 THE COURT: All right.

23 MS. SCHNEIDER: -- and address that.

24 THE COURT: Will you include my comments about  
25 the U.S. Board of Water Commissioners in that as well?

1 MS. SCHNEIDER: Yes, Your Honor. I -- well, I  
2 will -- the best -- to the best that my notes allow me to do  
3 so, I will do that, Your Honor.

4 THE COURT: All right. If you wish to  
5 disseminate a draft first to everyone and bring it to the  
6 Court's attention, I would be happy to review it as quickly  
7 as possible.

8 MS. SCHNEIDER: I will do that, Your Honor.

9 THE COURT: And if you do, tell everyone they  
10 have got to get an objection or comment in to the Court  
11 within five days.

12 MS. SCHNEIDER: Okay.

13 THE COURT: Is there anything else on item 1-A  
14 about the Sixteenth Report before we turn to the Rosachi and  
15 Walker General issue?

16 Mr. DePaoli?

17 MR. DePAOLI: Yes, Your Honor. Along the  
18 lines -- if I understood correctly, Ms. Schneider is going to  
19 be preparing a new order relating to this dismissal. I think  
20 it would be useful in that order to indicate to these parties  
21 that the fact that they're being dismissed without prejudice  
22 may mean that down the road they may have to become -- they  
23 may be joined as a party later --

24 My concern is that I think these parties  
25 probably don't completely understand the way the case

1 management order is structured and the fact that -- depending  
2 on how some of the threshold issues get decided, they may get  
3 dismissed today; but depending on how the threshold issue  
4 concerning the relationship between surface and groundwater  
5 gets decided, they may get joined again later.

6 And I think that maybe to whatever extent we can  
7 alert them to the fact that they are out for now but things  
8 may change might preclude some issues coming up down the  
9 road.

10 THE COURT: I think Mr. DePaoli makes a good  
11 suggestion, Ms. Schneider. Do you have any comments?

12 MS. SCHNEIDER: I can do something like that.  
13 The Court had already asked me to make that dismissal without  
14 prejudice. But I can put a sentence in to that effect.

15 THE COURT: I think that's well advised, so  
16 people don't get surprised if, down the road, they're brought  
17 back in.

18 MS. SCHNEIDER: I'll do that.

19 THE COURT: All right. I don't know how Judges  
20 Leavitt and McQuaid did in the past on these hearings, but my  
21 thought is to just go down the agenda item and ask if there's  
22 anything else, first, on 1-A that we need to address. And if  
23 not, we'll turn to 1-B.

24 All right. We'll turn to 1-B. No comments.  
25 And that's the Rosachi and Walker General. And I think maybe

1 we've already addressed that in our precedent discussions,  
2 that they will be eliminated from the mailing list.

3 And you're going to do a letter to them,  
4 Ms. Schneider?

5 MS. SCHNEIDER: I will, Your Honor, yes.

6 THE COURT: All right. So that takes care of  
7 that.

8 And I think what we just discussed on the report  
9 of the United States concerning the status of service in 1-C  
10 has also been addressed then.

11 MS. SCHNEIDER: Yes, Your Honor.

12 THE COURT: All right. Now --

13 MS. SCHNEIDER: The next -- I'm sorry.

14 THE COURT: Go ahead.

15 MS. SCHNEIDER: The next item is whether there  
16 are any issues regarding the most recent filed proof of  
17 service.

18 I noted this earlier, that our last filing of  
19 personal service made by a process server was done on  
20 November 30th, 2011. It's document 1670 in the B case.

21 As with past such filings, I had simply put them  
22 on the agenda to see if there were any concerns by any of the  
23 parties. And there had been none expressed at prior times.  
24 But I thought that since we had done the same thing with the  
25 earlier proofs that I would add that on the agenda here, to

1 see if there were any comments or questions.

2 THE COURT: Are there any comments or questions  
3 from anyone, agenda item 1-D?

4 Then there appears to be no comments or  
5 questions.

6 MS. SCHNEIDER: And at this point, Your Honor, I  
7 think the prior minutes of Magistrate Judge McQuaid on these  
8 issues referenced that he had deemed them served on the  
9 record, or somehow he had formally acknowledged the filing  
10 and accepted it. And I would ask that the Court do the same  
11 now.

12 THE COURT: Okay. Give me the magic words that  
13 I'm supposed to say.

14 MS. SCHNEIDER: I believe -- and I could add  
15 this into Report Sixteen, if you want me to. But my  
16 recollection is the minutes from prior sessions include that  
17 the Court had deemed the persons and entities listed on the  
18 proof of service to be served.

19 THE COURT: The Court deems the persons and  
20 entities listed on the proof of service to have been properly  
21 served. And if you would note that in the order.

22 MS. SCHNEIDER: I will.

23 THE COURT: Did I say that right?

24 MS. SCHNEIDER: I'll go back and check my notes.  
25 It sounds good.

1 THE COURT: When you redo your notes, make it  
2 sound like I said the right thing.

3 MS. SCHNEIDER: Okay.

4 THE COURT: Anything else on the issue of most  
5 recent proofs of service? I think I called that action 1-E.  
6 I think that was 1-D, actually, as in David.

7 Do you want to address -- go ahead now?

8 MS. SCHNEIDER: I will. The next item under 1-E  
9 is completing service. I have two subitems here. The first  
10 is the need for finalized caption. And what I wanted to note  
11 with the Court is with each approval of service report  
12 internally, we have been updating the caption. We have  
13 not -- there are no successors listed on that caption because  
14 they're not formally in the case at this point. That issue,  
15 of course, is still pending in front of Judge Reed.

16 And at some point -- today's not the time, I  
17 think, to decide that, but at some point we would be  
18 wanting to determine on -- with the Court, how to finalize  
19 the caption in the case. That's the first item.

20 THE COURT: Do you have to do that on C as well  
21 as B?

22 MS. SCHNEIDER: I believe that would happen in  
23 the C case, as well, although I would defer to  
24 Mr. Herskovits, who is on the telephone.

25 MR. HERSKOVITS: Yes. That is going to be

1 necessary for the C case as well.

2 MS. SCHNEIDER: We've also noticed that there  
3 are a handful of people who have filed appearances, who are  
4 not people we have actually served. So we're going to be --

5 THE COURT: Gluttons for punishment?

6 MS. SCHNEIDER: It is an interesting  
7 arrangement.

8 I think a couple of them may be successors, and  
9 we'll track them down and try to clarify that with them. But  
10 that's something we already have on our radar screen to deal  
11 with.

12 THE COURT: I would have to assume they are  
13 successors in some fashion. Because why in the world else  
14 would somebody in their right mind voluntarily get into this  
15 lawsuit?

16 MS. SCHNEIDER: I agree. I believe that's the  
17 case. At least it certainly was one of them. And it may be  
18 that they're not wholly successors. They may have succeeded  
19 to only a portion of a water right. But we will be tracking  
20 that down and try to figure it out.

21 The next item, which is one that I think that  
22 Mr. DePaoli had identified to me, is one that he also  
23 wanted to make sure that we address today, was to deal  
24 with addressing any challenges to service.

25 The Court -- we touched on this very briefly

1 at the last status conference. And Your Honor had  
2 suggested that I make a filing saying -- indicating that  
3 service was complete. And that's something I've certainly  
4 been thinking about.

5 But I think there's a question as to how we do  
6 that in conjunction with the requirements of the case  
7 management order and where something like that is done in  
8 terms of the sequence of completing the preliminary case  
9 management issues.

10 The paragraph that addresses that in the case  
11 management order is paragraph 9. I --

12 THE COURT: That's -- doesn't that --

13 MS. SCHNEIDER: I'm sorry.

14 THE COURT: -- preclude this case really from  
15 going forward with the identification issues, until service  
16 has been completed?

17 MS. SCHNEIDER: That's -- there was also -- let  
18 me move to the right page here. Paragraph 9 says that after  
19 we've compiled the list of parties that the United States and  
20 Tribe intend to serve, the list and a description of the  
21 procedures by which it was compiled has to be filed and  
22 provided to the parties who shall have such period of time as  
23 the magistrate judge shall determine to file objections  
24 indicating whether the list is complete and includes all such  
25 water rights claimants within the categories described in



1 paragraph 3 who can reasonably --

2 THE COURT: Paragraph 3 is the one with the nine  
3 subcategories?

4 MS. SCHNEIDER: That's correct, Your Honor.

5 THE COURT: Okay.

6 MS. SCHNEIDER: And then it says that the  
7 magistrate judge shall consider and rule on all such  
8 objections. And then corrections -- and addresses how and  
9 when corrections to the list of intended parties would be  
10 made.

11 A number of years ago I filed -- I did a  
12 filing with the Court to identify what it was we were  
13 doing to try to identify parties. And I don't have the  
14 finding in front of me, but I believe the Court basically  
15 accepted it for what it was. But I think that the  
16 question arises now as to how we deal with any objections  
17 to service.

18 And I don't -- I'm looking at Mr. DePaoli,  
19 because I think this was an issue that he also had wanted  
20 to address.

21 THE COURT: Mr. DePaoli?

22 MR. DePAOLI: Yes, Your Honor. And I wish my  
23 memory were better about this. But as I read what paragraph  
24 9 says, it seemed to me that it contemplated that all that  
25 would happen either before service started or well after

1 service started but while it was taking place. And we must  
2 have at some point decided not to do that quite that way.

3 I think really in order to deal with what's in  
4 paragraph 9, we need to see, I guess, a caption of who all is  
5 in the case. And I don't know to what extent it's necessary  
6 or not necessary to identify why they're in the case. But I  
7 think at this point, just having that caption will give us an  
8 indication as to whether anybody has been missed at least up  
9 to this point in time.

10 And I think that given where we are, we  
11 probably -- and part of this may depend on how Judge Reed  
12 handles the objections to the other orders. But it seems to  
13 me that whatever is on that list, it ought to be adequate for  
14 us to try to move forward with getting the threshold issues  
15 identified and moving along. And then if there's something  
16 else that needs to happen at some point later, it can be done  
17 then.

18 But I'm thinking that based on what has taken  
19 place to date, there is -- there should not be a lot to do  
20 in terms of what paragraph 9 has to say, which really was  
21 designed to make sure we had a fairly comprehensive list  
22 of who the United States and the Tribe were going to  
23 attempt to serve.

24 THE COURT: What document was it that I was  
25 looking at, if you could think of -- read my mind, that had a

1 list of all the defendants? Was it the amended complaint of  
2 Mineral County in C?

3 MR. DePAOLI: That has the C. But the caption  
4 in this case will be considerably larger than that. There  
5 is --

6 THE COURT: I think they have 3,850 service  
7 packages mailed out, and 1,500 personally served.

8 MS. SCHNEIDER: That's right. It's a fairly  
9 long caption, and we've been --

10 THE COURT: Looking at 3,000 defendants in B.

11 MS. SCHNEIDER: Approximately, yes, Your Honor.

12 THE COURT: And you think all those people,  
13 entities, holders have been served now?

14 MS. SCHNEIDER: What we were tasked to do was to  
15 identify the persons and entities who fit within those  
16 categories and then go out and serve them. And so what we  
17 did was to go and look at a variety of sources, whether it  
18 was cards of -- the WRID cards of persons and entities  
19 holding rights under the Walker River Irrigation District,  
20 the U.S. Board's cards for other decreed rights holders. We  
21 have been into offices -- the state engineer's offices in  
22 Nevada. We've been into similar offices in California.  
23 We've been into a variety of counties and had people do a  
24 fair amount of research. And so we certainly came to the  
25 conclusion that we had looked everywhere that we needed to

1 look.

2 One of the things that we also did was that in  
3 filing the service reports, we provided a certain amount  
4 of identification on every person and entity that we  
5 served. We identified the categories that we thought they  
6 fit into, although we caveated each filing saying that,  
7 you know, there might be more -- it may not be complete,  
8 it may not be everything.

9 And we identified whether they had attorneys.  
10 We identified their addresses, the names of the persons  
11 and entities and so forth. And so that information, along  
12 with the backup information, as exhibits, was provided to  
13 the Court. And it was provided to -- we served every one  
14 of the defendants -- the proposed defendants who were  
15 addressed in each such service order.

16 And we served each of those served persons and  
17 entities with the backup information that we had on them.  
18 Just for themselves. And then we made that information  
19 available to the primary defendants. It was filed with  
20 the Court and e-filed as the Court moved into using the  
21 e-service, the computer docket.

22 But then we -- the Court gave the primary  
23 parties -- and I think Ms. Peterson looked at them  
24 sometimes for questions of whether trusts were addressed  
25 properly. And Mr. Ferguson looked at most of them as

1 well. And so if they had objections, they were to be  
2 raised at the time that each service -- each service  
3 report was addressed. And that's how the Court went at it  
4 at the time.

5 THE COURT: So are we in position now in, let's  
6 start with B, to identify all the named defendants, in that  
7 we believe this list is fairly complete and accurate?

8 MS. SCHNEIDER: We are trying to pull that  
9 together now.

10 One thing I think that might help here, and  
11 following what Mr. DePaoli has said, looking at paragraph  
12 9 on page 8 of the case management order, the fourth line  
13 states that the -- this information is to be provided to  
14 the parties. And that would mean all 3,000.

15 And I'm not sure whether the Court intends  
16 that and whether it's information that would be provided  
17 to the primary parties such as those such as WRID that  
18 have been following this matter closely and would be the  
19 ones who would be doing the review of who is a party and  
20 who is not.

21 THE COURT: What was the language of paragraph 9  
22 that you had trouble with?

23 MS. SCHNEIDER: It's line 9. It indicates that  
24 it's to be provided to the parties who get a period of time  
25 to file objections as to whether the list is complete.

1 THE COURT: So you're concerned about sending  
2 that out to 3,000 people in B?

3 MS. SCHNEIDER: Right. And I'm wondering if the  
4 Court -- and if the Court would -- if the Court thinks that  
5 that should be interpreted to be less than all of the parties  
6 but the primary ones who have been doing the work on the  
7 case.

8 And, again, the record's not going to reflect  
9 this, but I'm looking at Mr. DePaoli right now to see if he  
10 has a position on this matter.

11 THE COURT: Why can't we assume that Judge  
12 McQuaid's order modified paragraph 9, that the service is  
13 only on the attorneys --

14 MS. SCHNEIDER: Very well, Your Honor.

15 THE COURT: -- what this refers to.

16 MS. SCHNEIDER: Yes, Your Honor. That, I think,  
17 would do it.

18 THE COURT: Does that take care of it?

19 MS. SCHNEIDER: I think that works it.

20 THE COURT: Mr. DePaoli?

21 MR. DePAOLI: Yes. I really think Judge Reed  
22 had in mind that this was going to happen while the number of  
23 parties were very small because the purpose was to identify  
24 all the other parties who were going to be served and brought  
25 in later, so that the reference there was to the parties who

1 were participating at the time and who were charged with  
2 helping to identify who all the other parties ought to be.  
3 So I think that's fine.

4 My main concern is to understand what it is  
5 we're going to be challenging here at this point in time.

6 THE COURT: I think we'll be challenging the  
7 list that Ms. Schneider is going to be preparing of  
8 defendants A through Z. Is that what you're going to be  
9 doing?

10 MS. SCHNEIDER: We will be -- we will start to  
11 put that together.

12 THE COURT: And then she'll distribute that list  
13 among the counsel who are getting service in this action and  
14 probably bring it up with the next report or the appropriate  
15 time to say this is the list. And then I think we've made  
16 some progress toward getting to the point where we can then  
17 turn to the threshold issues when service has been completed.

18 As I understand, under the CMO that's a  
19 pre-condition to addressing the threshold issues which you  
20 all identified, what, three, four years ago now?

21 MR. DePAOLI: Yes.

22 MS. SCHNEIDER: It also seemed to me that if  
23 there are any outstanding issues on this -- and maybe the way  
24 we've resolved this right now it's not going to be a concern.  
25 But my notes indicate that I was thinking that if there were

1 any other service issues, some of the -- that is an issue  
2 that we might also think about addressing, to some extent, in  
3 the -- whatever it is that we publish when we do publication.

4 That's all that I have on item number one, all  
5 the subparts.

6 THE COURT: Anyone else have anything to address  
7 in 1-E?

8 I don't think there's probably too much on two,  
9 but go ahead if that's your next problem.

10 MS. SCHNEIDER: I turn to Mr. Herskovits.  
11 That's his case.

12 THE COURT: Oh, the Mineral County case?

13 MS. SCHNEIDER: That's correct.

14 THE COURT: Mr. Herskovits.

15 MR. HERSKOVITS: Yes, Your Honor. This is --

16 THE COURT: Could you speak up a little bit,  
17 please.

18 MR. HERSKOVITS: Yes. Can you hear me now?

19 THE COURT: Yes.

20 MR. HERSKOVITS: Okay. Sorry.

21 THE COURT: Thank you.

22 MR. HERSKOVITS: This is Simeon Herskovits on  
23 behalf of Mineral County. I think your assessment is  
24 correct, Your Honor. We really -- the status of service has  
25 not changed. And a lot of it hangs or turns on the



1 resolution of the pending objections before Judge Reed.

2 I would point out that there were a number of  
3 issues that had been raised in WRID's objections to  
4 Magistrate Judge Leavitt's order that may well be, in fact,  
5 resolved by Mineral County's response to those objections.  
6 And I think once we receive an order from Judge Reed on the  
7 two or so fundamental questions that may remain outstanding,  
8 we would incorporate all of the issues in any agreement or  
9 consensus that we've reached with WRID over those issues into  
10 the service report or status of service report that we would  
11 file after Judge Reed's order.

12 There's really nothing more to report. As has  
13 already been mentioned, the caption in 125-C is part of what  
14 is before Judge Reed right now. And I think that once we  
15 have that order, we'll have a clear roadmap towards the  
16 finalization of the caption in 125-C as well.

17 THE COURT: All right. Thank you.

18 Does anyone have any comment on agenda item two?

19 Ms. Schneider.

20 MS. SCHNEIDER: Moving on to item three, Your  
21 Honor?

22 THE COURT: Yes.

23 MS. SCHNEIDER: This addresses the status of  
24 work on the notification protocol. At the last status  
25 conference, the Court directed the primary parties in B case

1 to -- and also in C, to try to begin to discuss a variety of  
2 methods to use to do notification here.

3           The first issue that we talked about and focused  
4 on is a proposed order and -- notice and order regarding the  
5 use of electronic service. We elected to focus on the B case  
6 and not the C case at this point because the B case seems to  
7 be a little closer to moving into the -- into that kind of  
8 order. C doesn't seem quite ready for it. And if we can put  
9 something together in the B case that is acceptable to the  
10 Court, then I think we can certainly do the order for the C  
11 case fairly rapidly thereafter.

12           THE COURT: Does this agenda item coincide with  
13 item number 6 as well? Should we take these together?

14           MS. SCHNEIDER: Yes, Your Honor. It does, to a  
15 degree.

16           THE COURT: You know what I might -- Lia Griffin  
17 from the clerk's office is here. And I would ask her to  
18 maybe sit here at the witness stand, if you want, because I  
19 think she and her office are going to be a key player in this  
20 matter. And we'll need her participation on these issues,  
21 particularly as to the electronic service.

22           MS. SCHNEIDER: And what I did was I used the  
23 first order in the Orr Ditch Decree on the use of e-service  
24 for persons who were not represented by counsel who had filed  
25 notices of appearance.

1 THE COURT: I noticed some similarity of  
2 language --

3 MS. SCHNEIDER: Yes. And --

4 THE COURT: -- between the two.

5 MS. SCHNEIDER: -- the parties had several calls  
6 on it. And drafts were exchanged. And we still have a draft  
7 document with some questions that we need to still discuss.

8 But what I did in conjunction with today's  
9 status conference was to contact Ms. Griffin and send a  
10 copy of the draft to her.

11 And I also contacted Mr. DePaoli to let him  
12 know that I had done so.

13 And I was asked and set up a meeting with her  
14 this morning. And so Mr. Ferguson and I met with  
15 Ms. Griffin this morning to talk about a variety of  
16 issues, beginning with the proposed -- the draft e-service  
17 order and notice.

18 She gave us several comments and observations  
19 and some suggested changes and edits. And I'll be working  
20 on that. And my intent is to send a revised draft out to  
21 the various attorneys who are working on this so that we  
22 can try to bring that draft to a position where we can  
23 think about how it is that we would like to present it to  
24 the Court.

25 Now --

1 THE COURT: You know what. Let me interrupt a  
2 second. I had a couple meetings with Ms. Griffin this  
3 morning as well. And I think we might ask her to comment on  
4 it.

5 But I think she perceives that the Orr Ditch  
6 Decree was mainly a mechanism to receive filings by e-mail,  
7 while what you're proposing is both sending -- or filing and  
8 receiving.

9 MS. SCHNEIDER: I intended to draft the order  
10 only for receiving and not for filing. I think we're on the  
11 same page. But, clearly, the way she read the order, I  
12 hadn't written it clearly enough.

13 THE COURT: She had a suggestion, too, though,  
14 so what you could do by non-attorney filers.

15 Ms. Griffin, would you address that, of the  
16 court clerk's office filing in it for them.

17 MS. GRIFFIN: We spoke about it --

18 THE COURT: Would you speak into the microphone  
19 there so we can get --

20 MS. GRIFFIN: Yes. Counsel and I discussed it  
21 this morning. And it would closely mirror what's going on  
22 with the Orr Ditch Decree in that when pro se filers need to  
23 file a document, they would still send it into the clerk's  
24 office, rather than filing it electronically.

25 That way when the clerk's office docket that

1 item, we can make sure that it's properly electronically  
2 connected where it needs to be, so that it's submitted to the  
3 court in the usual fashion.

4 In the Orr Ditch Decree, the scheduling  
5 order -- the briefing scheduling order on the motion to  
6 amend goes into a description on how, then, the documents  
7 that the pro se filers are filing with the court would be  
8 disseminated to all the other parties, in order that the  
9 pro se filers aren't having to endure that large postage  
10 fee of what did we calculate, about \$500 just to file any  
11 documents.

12 So in the Orr Ditch Decree, I understand, and  
13 Mr. Ferguson is probably more conversant about this, that  
14 it's done through a postcard method. And it's done  
15 periodically, not at each filing. No?

16 THE COURT: Mr. Ferguson, do you wish to address  
17 it?

18 MR. FERGUSON: Thank you, Your Honor. I think  
19 the way it has been done so far is --

20 THE COURT: You can go ahead and be seated,  
21 Mr. Ferguson.

22 MR. FERGUSON: -- for each filing there has been  
23 a postcard that has gone out.

24 THE COURT: For each filing?

25 MR. DePAOLI: Excuse me, Your Honor. Gordon

1 DePaoli. There is -- to my knowledge, there is no notice  
2 given of pro se filings to anyone who is not signed up for  
3 electronic service.

4 THE COURT: At the present time, there isn't?

5 MR. DePAOLI: At the present time in Orr Ditch.  
6 The only postcard --

7 THE COURT: Oh, in Orr Ditch?

8 MR. DePAOLI: Yes. In Orr Ditch the only  
9 postcard notice goes when one of the parties represented by  
10 counsel does a filing.

11 In other words, pro se filings by respondents  
12 are e-filed by the clerk -- or are filed by the clerk, and  
13 that goes to everyone electronically. But there is no  
14 postcard notice that I'm aware of that gives notice of that  
15 filing to other respondents. Or in this case, that would be  
16 to other defendants.

17 THE COURT: So if somebody in that case, pro se  
18 filer were to file a motion for summary judgment, that  
19 doesn't get served on everybody?

20 MR. DePAOLI: It does not get served on the pro  
21 se parties. But that's an unusual proceeding, Your Honor,  
22 because the only -- what is going on there is a motion to  
23 amend the decree under Rule 60. And so it's a very limited  
24 sort of pleadings that are going to get filed; whereas here,  
25 it is something that I think we do need to consider, in terms

1 of what should or should not happen when a pro se party makes  
2 a filing -- pro se defendant makes a filing.

3 And there's a number of options that I think we  
4 could consider here. One is to deal with or to look at Rule  
5 5, which would allow for exempting any service by defendants  
6 on defendants. That may or may not work. I think the other  
7 thing that we could consider at some point is whether a pro  
8 se filing would get some kind of a postcard notice to go out.  
9 But that's, I think, a bridge we can maybe have to cross  
10 later.

11 THE COURT: Well, this is all in a work in  
12 progress stage, is it not?

13 MR. DePAOLI: Yes.

14 THE COURT: All right. I just tell you that the  
15 clerk's office would be very accommodating, and I'll do what  
16 I can, as well, to work on this issue, about a good way for  
17 service, both filing and service of documents, and any other  
18 questions, whether a website may or may not work. But I can  
19 assure you, we will have the cooperation of the court system  
20 on this.

21 MS. SCHNEIDER: I appreciate that, Your Honor.

22 There are a couple of other things that we had  
23 talked to Ms. Griffin about today as well.

24 We're in the process of starting to put together  
25 an Excel spreadsheet with the names and addresses in various

1 categories of the persons and entities who filed notices of  
2 appearance. And we are prepared to give that to the clerk's  
3 office, to assist them, because they don't have such a filing  
4 prepared, I think, at this point. And we could get it -- we  
5 could make it available. We could just file it so that all  
6 the other parties have it as well. It would be taken from  
7 the information that we have. Certainly there will be  
8 mailings that bounce back.

9 But as we think about moving beyond Magistrate  
10 Judge McQuaid's order, number 1300, which is the one  
11 limiting service, we need -- that's part of what we have  
12 to think about in how we open up and broaden service. So  
13 we're prepared to do that.

14 And it's the same clerk who is working -- same  
15 paralegal working on that who I would be asking to put  
16 together the -- make sure we have an updated case caption.  
17 And she would probably be working on the two together.

18 I think it's -- if nobody -- she's doing both  
19 tasks. If there was no interruption, she would probably  
20 do it in about five weeks or so. But knowing my office,  
21 there are going to be interruptions for her. So it's  
22 going to take her a period of time to get this put  
23 together. But it's something that we're prepared to make  
24 available to the Court and others once we finish --

25 THE COURT: So what you're assembling are two



1 different things. One is just a list of all the defendants.

2 MS. SCHNEIDER: That's correct.

3 THE COURT: And now what you're proposing here  
4 is a list of those defendants who have responded with the  
5 notice of appearance. And we would have their address or  
6 e-mail, or whatever information is on that notice; and then  
7 those who have not -- who have been served and who have not  
8 responded?

9 MS. SCHNEIDER: That's correct. And I think we  
10 also were thinking about making a category of persons and  
11 entities who we think have -- for which there are notices of  
12 successors. And there may be another category that she was  
13 thinking about as well.

14 But I had indicated to Mr. Ferguson and  
15 Ms. Griffin that I would be in contact with them as we moved  
16 ahead on this, to see if it was -- to see how it could help  
17 the Court and the parties.

18 THE COURT: One of the -- sort of a collateral  
19 issue to this, something that I was thinking about when  
20 Ms. Peterson raised the question about concern about total  
21 finality of any order here. I mean, if somehow the -- as I  
22 call it, the Rocking R Ranch slipped through the cracks and  
23 never got -- we never knew that they were water rights  
24 holder, and never got served with anything, and having them  
25 come in down the road and saying we object to this because we

1 weren't served, didn't have notice.

2           What about doing some type of notice by  
3 publication that these lawsuits -- and, Mr. Herskovits,  
4 that would probably pertain to the C case too. Something  
5 along the lines that notice -- there's a lawsuit pending  
6 which affects the water right holders, the Walker River,  
7 the Walker River Basin, whatever is an appropriate  
8 description, and that the lawsuits are pending. We have  
9 served everyone we believe who are bona fide water right  
10 holders, and this decree will be final and bind you. If  
11 you have not been served, you are obligated, by order of  
12 the Court, to contact so and so. Or something along those  
13 lines.

14           And I'm just bringing this up as a  
15 consideration as one way to ensure that we have some type  
16 of finality, and another way to ensure that everyone is in  
17 this case who should be in this case.

18           MS. SCHNEIDER: I -- thank you, Your Honor. I  
19 think that's an excellent suggestion. And it goes beyond  
20 what I -- similar to but goes beyond it and gives more detail  
21 on what I had been thinking of as well.

22           It seems to me that in doing the traditional  
23 publication, as we have -- you know, we haven't been able to  
24 serve so and so, that that publication can be used more  
25 broadly.

1 I also think that in -- to accomplish what Your  
2 Honor is suggesting. And it also seems to me that that is  
3 also something that could be done periodically in conjunction  
4 with implementation of Magistrate Judge Leavitt's order, if  
5 that's what Judge Reed decides to affirm.

6 And so I -- what I -- so I'm jumping ahead here  
7 a couple of items. But what I wanted to suggest to the Court  
8 is that United States do -- continue some discussions with  
9 the primary defendants about publication but that either this  
10 next -- our next status hearing or the one after, that we  
11 present you with a proposal on how we would go about doing an  
12 initial publication, and see if that meets the Court and  
13 parties' approval.

14 THE COURT: Would it be helpful to have a more  
15 informal meeting outside of the formal trappings of the  
16 courtroom, where we could sit around a conference table and  
17 discuss it?

18 MS. SCHNEIDER: I think that would be fine as  
19 well, yes, Your Honor.

20 I think that what would be helpful -- what I  
21 have right now are a number of examples of publication in  
22 other cases in this area and also can get ahold of  
23 publications that have been done in some water cases. And  
24 so I was going to use those examples as a way of putting  
25 something together.

1           Again, having jumped to publication, when we  
2           were talking on the phone; that is the primary parties the  
3           other week, we do have an agreement that the newspapers  
4           that we would publish in would be the same that are used  
5           by the U.S. Board for its annual budget report. So we at  
6           least know where we would be publishing it.

7           And then -- obviously, then, the next question  
8           is, you know, what exactly we would be publishing.

9           THE COURT: I'm trying to think of the name of  
10          the newspaper in Yerington. And Judge Reed would probably  
11          kill me by not remembering. Who Walther -- what was it,  
12          Sage -- Mr. DePaoli, help me here.

13          MR. DePAOLI: Walther Cox.

14          THE COURT: Cox, yes. Okay. So have we -- I  
15          think you kind of embraced that idea about some type of  
16          notice about this lawsuit that may or may not be legitimate  
17          but certainly helps us proceed down that road.

18          MS. SCHNEIDER: Yes, I agree with that, Your  
19          Honor.

20          I think it also raises a question that we talked  
21          with Ms. Griffin about today, and that is -- and I don't  
22          think -- and I think the parties need to talk about this some  
23          more and think about it, and that is the sequencing of what  
24          we do.

25          When the primary parties were talking the last

1 few weeks, we were focusing on the e-file order. And  
2 Ms. Griffin has pointed out that that may be a little bit  
3 premature, to put that out first. Because once we put  
4 that out, the Court is going to be serving everybody. And  
5 that would seem to bring an end to the effect of  
6 magistrate judge orders, document 1300.

7 And so I think another issue for us to talk  
8 about some more is what is our sequence here? And it may  
9 be, I think, that publication might come -- would come  
10 before that.

11 THE COURT: I would tend to agree. What is your  
12 recommendation for the sequence?

13 MS. SCHNEIDER: Right now I'm thinking that  
14 publication should come first. But I also want to try to put  
15 as many of these different protocols into place, or have them  
16 drafted, or close to being drafted, so that matters can move  
17 fairly quickly.

18 I also think that an awful lot of what we do  
19 maybe would very likely be impacted by whatever order  
20 Judge Reed comes down with on the objections that are  
21 pending in front of him. That may cause us to back up and  
22 do a few different things here.

23 I mean, for example, if he sustains Magistrate  
24 Judge Leavitt's order, then I think that the notice on  
25 publication might want to address the issue of successors

1 and identify, you know, if you are a successor, you know,  
2 you might want to check with -- you should be checking  
3 with your predecessor, to see if they were served with  
4 your party, or something like that, that would be a way to  
5 flag that.

6 The other thing -- well, it would be nice to  
7 do that from the beginning. But if we are talking about  
8 doing periodic notices, then certainly that could be done  
9 in the future. But it would be better to do it from the  
10 start.

11 THE COURT: And the sequence after the notice  
12 would then come the filing of all the parties in case the  
13 notice flushes out some other people? Or would you go ahead  
14 and do that and then amend it if necessary?

15 MS. SCHNEIDER: I think I would file -- I would  
16 probably want to file -- start out by filing what we think is  
17 the current caption and the addresses at the same time that  
18 we're working on publication. That probably would go first.  
19 Because if there are corrections, then the sooner we get  
20 them, the better.

21 THE COURT: Okay.

22 MS. SCHNEIDER: And I -- well, I'm sorry.

23 THE COURT: Mr. Ferguson, do you have any  
24 comments?

25 MR. FERGUSON: No, Your Honor.

1 THE COURT: Where was I -- oh, Mr. Ferguson over  
2 here. I'm sorry. I meant Mr. Williams. I'm sorry.

3 MR. WILLIAMS: No, Your Honor, I don't.

4 THE COURT: Okay.

5 And, Mr. Ferguson, you had some experience with  
6 that, with the Orr Ditch case?

7 MR. FERGUSON: Yes, Your Honor.

8 THE COURT: So I presume your experience in that  
9 will be very helpful on trying to figure out something here,  
10 what we're doing?

11 MR. FERGUSON: Yes, Your Honor.

12 THE COURT: Do they do that general type of  
13 notice or publication notice that I have talked about?

14 MR. FERGUSON: No, Your Honor. Not in the  
15 motion to amend that you're speaking of.

16 THE COURT: Mr. DePaoli, did you have something  
17 to add?

18 MR. DePAOLI: I guess I'm still trying to think  
19 about the sequencing issue. And I guess I'm -- I'm focused  
20 on two things, really, right now, Your Honor.

21 One is how we get to a point where we can  
22 finalize or even get a preliminary determination of the  
23 threshold issues; and, second, how we can get decided the  
24 question of whether answers are going to be required. And I  
25 think that, particularly as to the latter, we need to think

1 about that in the context of what we're talking about.

2 Because if there's a determination made that answers are  
3 going to be required, then there's going to have to be --  
4 people are going to have to be notified of that and given  
5 time and opportunity to do all of that.

6 Right now, up to this point, everyone has been  
7 served with something that says answers are not required  
8 and will only be required on further order of the Court.  
9 And --

10 THE COURT: Could we do something with an order  
11 of the Court that says answers are required and those who  
12 wish to do so may do so, those who don't file are deemed to  
13 just deny the principle averments of the complaint, amended  
14 complaints, whatever?

15 MR. DePAOLI: And I think that we have divergent  
16 views on whether answers ought to be required at this point.  
17 I don't think answers should be required at this point. I  
18 think that --

19 THE COURT: Well, I'm not even suggesting that  
20 I'm going along answers are required now. I think that's  
21 premature. I think that's for discussion on another day,  
22 actually. Because I'm wondering whether some people might  
23 have motions that they would want to litigate first, 12(b)  
24 motion, perhaps.

25 MR. DePAOLI: I think that's the threshold --



1 purpose of the threshold issues, really, was to get some of  
2 those litigated first.

3 And in terms of sequencing -- and I understand  
4 we need to think about when we do the notice to everyone  
5 to elect to receive service under the court system or  
6 somewhere else may trigger some other things.

7 But in order to figure out what it's really  
8 going to cost to have a website and to have in place  
9 somebody to do postcard notice filings and that sort of  
10 thing, it's going to be really helpful to know how many  
11 people actually do sign up for the service through the  
12 court system.

13 And so I don't think we have to decide all of  
14 this today, but I do think that -- based on the  
15 conversation that Ms. Schneider and Mr. Ferguson had with  
16 the clerk, that we need to get our heads back together and  
17 sort of figure this out in a way that will work for  
18 everyone.

19 THE COURT: Can we defer, then, just to counsel  
20 to brainstorm this issue and come back at the next status  
21 conference with the report and what the proposals are?

22 MR. DePAOLI: I think that would be a good idea  
23 to do that.

24 THE COURT: My thought is that we wait on -- as  
25 far as sequencing, get this notice done, get this list of

1 who's in this case done. And then maybe we turn to the  
2 threshold issues to include whether answers are filed or  
3 whether we address first -- do answers, and then identify the  
4 threshold issues. But I think that's for another day.

5 Is there any other comment on this protocol  
6 that we've been discussing about the general notice and  
7 clarifying the list of defendants?

8 MS. SCHNEIDER: Not on that. There's also the  
9 website issue. I don't know whether Your Honor wants to  
10 discuss that right now.

11 THE COURT: Yes, I would like to.

12 MS. SCHNEIDER: We still have been talking about  
13 a website. We need to review some proposals that we've  
14 gotten. Mr. DePaoli got one from one entity. I have some  
15 general information from back when I was trying to put  
16 together a website. And I think there are some cost issues  
17 that we need to definitely spend some time talking about.

18 And we also talked to Ms. Griffin today about  
19 a variety of options that we might take a look at as to  
20 whether or not -- how we could get information out to  
21 parties through the use of website or otherwise.

22 I think that there are -- I understand that  
23 there are some -- there are potentially some obstacles for  
24 the federal court to do it, and we need to explore that a  
25 little more and try to understand it. I think that --

1 THE COURT: I think maybe Ms. Griffin might  
2 address that issue because right now we might be precluded to  
3 giving anyone any more than one-shot look at the documents.

4 Ms. Griffin?

5 MS. GRIFFIN: The Judicial Conference directs  
6 that the court's per-page fee, which is your PACER fee, it's  
7 eight cents a page. And that is required by the Judicial  
8 Conference.

9 I am -- I told Ms. Schneider that I would look  
10 into any exceptions to that, or if there have been exceptions  
11 made by other courts in the Ninth Circuit, to see if they  
12 have cases published on their websites or their external  
13 websites without charge. So I will look into that and report  
14 back.

15 THE COURT: I like the idea of a website myself.  
16 But I can see some obstacles, one of which is who is going to  
17 maintain it and the cost of doing so and disputes about what  
18 information may or may not be on the website. We could also  
19 be opening up a huge can of worms.

20 MS. SCHNEIDER: It could be. I think in the  
21 long run, it might be helpful to -- for administration of the  
22 decree and for any other water management issues in the  
23 basin. But that certainly goes beyond the litigation. I  
24 think one of the things that we should talk back among  
25 ourselves would be the scope of any initial website that

1 would focus just on the litigation.

2 My contractors, who unfortunately we can't do  
3 the website through the Justice Department, had indicated  
4 that they had thought that the initial year would be the  
5 most costly, and that simply populating it with documents  
6 and dealing with storage in the subsequent years would be  
7 a lot -- would be significantly less.

8 And I think that that's something that -- and  
9 that's in contrast to, I think, the proposal that WRID  
10 obtained. So we need to sit down and talk about it and  
11 maybe see if we want to talk to some other providers or go  
12 back to WRID's provider with some additional requests.  
13 But I think we're all looking for something that is as  
14 cost effective as possible.

15 THE COURT: And I'm sure Ms. Griffin will let  
16 you know if she finds out anything in another -- any other  
17 federal court cases, perhaps in class action lawsuits or  
18 something where this has been utilized.

19 MS. GRIFFIN: Yes, Your Honor.

20 MS. SCHNEIDER: Right. And I -- we had looked  
21 at -- for it at one point. And I will have to go back and  
22 check the notes and files on that to see if we found anything  
23 in any other courts. We certainly had found the bankruptcy  
24 websites.

25 But I believe it was Mr. Ferguson pointed out

1 that in working on Orr Ditch, they discovered that there were  
2 some exceptions, by rule or statute, for bankruptcy courts to  
3 do this kind of thing.

4 THE COURT: You know, Mr. Benesch worked  
5 extensively on websites when he was in high school back in  
6 the '60s, and he was very clairvoyant and knew what was going  
7 on in advance. He could probably do that for you.

8 MR. BENESCH: Not a chance.

9 THE COURT: All right.  
10 What's your next agenda item?

11 MS. SCHNEIDER: We talked about publication  
12 already. So the next item is to update the certificate of  
13 service in the three cases. This has been a continuing issue  
14 for the Court.

15 And I know that people in the clerk's office  
16 have done a lot to try to update some of these matters  
17 recently. There's also some -- when we saw the sheets, I  
18 don't know what you call them, but the sheets that were  
19 outside the courtroom last time we were here, they had the  
20 attorneys in all different categories that weren't  
21 necessarily correct.

22 So I just -- this is something we filed, I've  
23 been talking to Ms. Griffin about. And to the extent that  
24 the clerk's office would like us to take a look at any of  
25 these lists, we would be happy to do so and get back to her

1 on it.

2 THE COURT: Very good.

3 MS. GRIFFIN: If I might, Your Honor?

4 THE COURT: Yes.

5 MS. GRIFFIN: The challenge to -- there is a  
6 potential solution to that. The challenge is that in order  
7 to have everyone matched up on the correct side of the aisle,  
8 if you were plaintiffs, defendants, counterdefendants, the  
9 clerk's office would have to essentially re-docket every item  
10 ever, period, in the case.

11 If I were to change the United States from one  
12 side of the aisle to the other, you would have to create a  
13 whole new entity, United States, file every single document  
14 the United States ever filed, and then delete the old United  
15 States. So the clerk is not in favor of that option.

16 MS. SCHNEIDER: Understandably.

17 THE COURT: It doesn't sound like a palatable  
18 option. At least to the clerk's office.

19 MS. GRIFFIN: Yes.

20 MS. SCHNEIDER: But I think Ms. Griffin had a  
21 suggestion as to how that could be fixed, at least for the  
22 Court's use.

23 THE COURT: All right.

24 Any other comments on this subject?

25 MS. SCHNEIDER: The next item is the treatment

1 of served defendants who have not filed notices of  
2 appearance.

3 It's our position that if we serve people and  
4 they didn't file a notice of appearance that that's it.  
5 And we think -- and they don't -- neither the United  
6 States nor the Tribe nor the Court has any duty to go and  
7 find them.

8 Certainly publication, if we -- however we  
9 put -- whatever we put in publication notice might give  
10 them another opportunity to get involved if they want to.  
11 But we do think that we just need something on the record,  
12 and we can include this in publication -- in the  
13 publication, that persons and entities who did not file  
14 notices of appearance are going to be deemed to be -- will  
15 be deemed to be -- will be deemed to have -- to be  
16 involved in the case but -- and to have received  
17 everything, but to have received all the documents even if  
18 they haven't filed a notice even if they -- because they  
19 haven't done anything. I'm not being very -- I'm sorry.  
20 I haven't said that very clearly.

21 But I'm trying to track the language that was  
22 used in the C-125-C order that Judge Reed did some time  
23 ago that basically said that people who didn't file a  
24 notice of appearance would be deemed to be served from  
25 thence forth.

1 THE COURT: Well, they're deemed to be served  
2 because, in fact, service was effected upon them.

3 MS. SCHNEIDER: They were served. And --

4 MR. HERSKOVITS: Yes.

5 MS. SCHNEIDER: But they have decided not to  
6 participate. And they were bound by any of the results of  
7 the proceeding.

8 THE COURT: Mr. Herskovits, did you want to add  
9 something?

10 MR. HERSKOVITS: Yes. I'll just clarify that.  
11 I believe that in C-125-C order that Ms. Schneider is  
12 referring to, Judge Reed said that defendants who had been  
13 served and who do not appear or respond are, nevertheless,  
14 deemed to have notice of subsequent orders of the Court or  
15 other filings or pleadings in the case.

16 So I think that that's what Ms. Schneider is  
17 basically requesting in the 125-B case. I think it should be  
18 noted that that is an issue that's before Judge Reed right  
19 now.

20 WRID has taken a different position with regard  
21 to what Judge Reed meant in the order back in 1995. There  
22 are actually a couple of orders in 1995 in which Judge Reed's  
23 basically reiterated that point.

24 But essentially if Magistrate Judge Leavitt's  
25 order is upheld by Judge Reed, then I think there would be no



1 reason not to do as Ms. Schneider is suggesting in the 125-B  
2 case.

3 MS. SCHNEIDER: Your Honor, the docket --

4 MR. HERSKOVITS: And I think it only makes sense  
5 that if the defendant is, in fact, served the process  
6 properly then and does not -- you know, makes the choice not  
7 to cooperate or participate and in no way makes any  
8 appearance, then I think it's only appropriate that the Court  
9 deems that defendant to have notice of further proceedings.

10 THE COURT: And that's what you're saying Judge  
11 Reed did in C?

12 MR. HERSKOVITS: Yes. But I --

13 THE COURT: All right. Mr. DePaoli, did you  
14 have --

15 MR. HERSKOVITS: -- think that -- I apologize,  
16 Your Honor.

17 THE COURT: No, go ahead.

18 MR. HERSKOVITS: I was just going to say that  
19 that issue is disputed by WRID. And it's before Judge Reed  
20 right now. Whether my description or my interpretation of  
21 what Judge Reed ordered is correct.

22 MS. SCHNEIDER: Your Honor, the order that I'm  
23 looking at, and I finally found it, is document 48 in the C  
24 case. And it's paragraph 5 on page 4. And it says that  
25 persons, corporations, institutions, associations, or other

1 entities who waive service or are served who do not appear  
2 and respond to Mineral County's Motion in Intervention shall  
3 nevertheless be deemed to have notice of subsequent orders of  
4 the Court with respect to the motion in intervention, answers  
5 or other responses to the proposed complaint-in-intervention  
6 or responses to the motion for preliminary injunctive relief.

7 And I think a version of that would be  
8 appropriate for application in C-125-B.

9 THE COURT: And what would that go in?

10 MR. HERSKOVITS: If I could --

11 THE COURT: Just one second, Mr. DePaoli.

12 And if we did agree to do that, what would that  
13 go into, another --

14 MS. SCHNEIDER: I think we could put it into the  
15 order that Your Honor has asked me to draft. But I also  
16 think that it could go on -- in the publication too.

17 THE COURT: I think I would rather address it  
18 when we get to the publication issue, rather than the revised  
19 order on the Sixteenth Status Report.

20 MS. SCHNEIDER: All right.

21 THE COURT: Mr. DePaoli, go ahead.

22 MR. DePAOLI: Yes. What I wanted to say is we  
23 do have a disagreement as to what Judge Reed intended back in  
24 1995. And so 125-C, we'll have to wait to see what he does  
25 there.

1           As far as B goes, there really is no need  
2 to -- that I can see, to have -- to do anything. Judge  
3 McQuaid before the -- there's a difference between how  
4 service progressed in C and D.

5           But before any service started in B, Judge  
6 McQuaid, in his orders and in the notice in lieu of  
7 summons, specifically indicated that persons were required  
8 to -- who were served or who waived service, were required  
9 to file a notice of appearance, I believe within 20 days  
10 of having been served, and that if they failed to do so,  
11 they would nonetheless be deemed to have notice of all  
12 future orders of the Court in the proceeding. So that  
13 was, if I'm recalling this --

14           THE COURT: Well, isn't that what they're saying  
15 occurred in C, as well, and you're just disputing that Judge  
16 Reed said that?

17           MR. DePAOLI: That occurred --

18           THE COURT: Meant that?

19           MR. DePAOLI: -- in the -- and Judge McQuaid  
20 made that order in C and sometime in -- I've lost track of  
21 when that was. But it's sometime in 2000 or 2001 or 2002.

22           The argument in C has to do with what -- Judge  
23 Reed and Ms. Schneider read it. Judge Reed said persons  
24 shall appear and respond to the motion to intervene. And  
25 that order started off with a specific date for when a

1 response was due.

2 So persons -- the time for their appearance and  
3 the nature of their appearance was in response to the motion  
4 to intervene. That timeframe got changed, got modified, and  
5 ultimately got completely done away with in that proceeding,  
6 and so the issue is going to be for those people who have  
7 never been given a precise date for when they were supposed  
8 to respond to the motion to intervene, are they not entitled  
9 to any further notice. And that's the difference.

10 But what Judge McQuaid did in B and what he  
11 did in C, beginning in -- sometime in 2000 or 2001, was  
12 all people who got served were served with something that  
13 says you shall appear within 20 days by filing this notice  
14 of appearance; and if you don't, you're deemed to have  
15 notice of all subsequent orders of the Court.

16 THE COURT: Well, what was kind of confusing to  
17 me, though, he then went ahead and said in 1300 that the only  
18 ones who were going to be served with anything are the  
19 attorneys. So what difference did it make, as a practical  
20 matter, whether an individual defendant signed that form and  
21 sent it back in or didn't. He or she's still not getting any  
22 notice.

23 MS. SCHNEIDER: Well, no, it matters in that  
24 they would have -- they sent back waivers of service and that  
25 they -- we didn't have to go serve them personally. And at

1 the same time they would have to file a notice of appearance.  
2 And the same information, at least a notice of appearance,  
3 was given to the people that we ended up having to serve  
4 personally.

5 So at this point, I think the issue really is  
6 the people we don't have to serve right now are persons  
7 who have -- persons and entities who have filed notices of  
8 appearance but are pro se. And that's really what we're  
9 talking about here.

10 And then the other group of people we're  
11 talking -- the other category that we started to talk  
12 about here, were people who were served who -- or even  
13 people who waived service, who did not file notice of  
14 appearance.

15 I think, though, that based on what  
16 Mr. DePaoli has said, it sounds like we're in agreement on  
17 what should be done here. I need to go back and take a  
18 look at the service package that was sent out. I didn't  
19 think that it stated everything as strongly as Mr. DePaoli  
20 just stated it, but I will go back and double check and  
21 report to the Court at the next status conference on that.  
22 And Your Honor had also said you wanted to leave that  
23 issue go, anyway, until we got into publication.

24 THE COURT: That's correct. So is there  
25 anything else we need to address on this -- or that the Court

1 needs to decide or give you guidance on on this particular  
2 topic at this time?

3 MS. SCHNEIDER: It sounds like nothing at this  
4 time then, Your Honor.

5 THE COURT: We've been going for a little over  
6 an hour and a half. I don't want to kill our court reporter  
7 here.

8 Ms. Reporter, do you need a recess?

9 THE COURT REPORTER: No, Your Honor.

10 THE COURT: All right. Well, then, why don't we  
11 proceed then.

12 MS. SCHNEIDER: The next item is the status of  
13 the order limiting service pending completion of service.  
14 We've already talked about this item. So I think we can move  
15 on.

16 The next was just any other notification  
17 protocol issues. I don't know of anything else, and I had  
18 nothing else on item three.

19 THE COURT: Anyone else on item 3-H?

20 All right. Please proceed, Ms. Schneider.

21 MS. SCHNEIDER: The next item number four is the  
22 status of the objections that are pending before Judge Reed.  
23 We've already addressed that, that they're still pending.

24 And then the next issue on number five was just  
25 to flag some of the upcoming issues.

1 I simply moved these into this list because I  
2 know that there are things that are coming up in the future.  
3 But they really aren't issues that I think we need to resolve  
4 today.

5 THE COURT: One of which was the filing of an  
6 answer, when answers need to be filed, which Mr. DePaoli  
7 raised earlier.

8 MS. SCHNEIDER: That's correct.

9 THE COURT: All right. Is that -- it would seem  
10 to me that we don't identify the threshold issues unless and  
11 until we get the service issue done and out of the way.

12 MS. SCHNEIDER: Correct, Your Honor.

13 THE COURT: Which is what the CMO said anyway.

14 MS. SCHNEIDER: That's correct.

15 THE COURT: All right. And we're not going to  
16 address today, or make a ruling today, either, as to when  
17 answers are going to be required, or whether answers are  
18 required, or might be some other type of Rule 12 motion or  
19 something.

20 MS. SCHNEIDER: Yes, Your Honor.

21 THE COURT: Is there anything else under item  
22 5-B?

23 MS. SCHNEIDER: I have nothing under -- nothing.

24 THE COURT: Does anybody else wish to address  
25 anything else on item 5-B?

1 Ms. Schneider, please proceed.

2 MS. SCHNEIDER: The next item would be the  
3 briefing and resolution of Mineral County's motion. And that  
4 certainly is premature to talk about that today too.

5 But, again, that's Mr. Herskovits' case.

6 MR. HERSKOVITS: We would agree that it's  
7 premature at this point to be addressing that. Obviously  
8 that can't go forward until service is complete.

9 THE COURT: All right.

10 Does anybody else have anything to address on  
11 item 5-C?

12 Item number six I believe we addressed earlier  
13 under item three, I believe.

14 MS. SCHNEIDER: There's only --

15 THE COURT: Is there anything else that will  
16 come forward on this issue?

17 MS. SCHNEIDER: Excuse me, Your Honor. Yes,  
18 there was one other issue. And we talked to Ms. Griffin  
19 about it as well.

20 As the Court probably knows, there are problems  
21 with doing e-filing these days, that when anybody files a  
22 document that, for some reason, a group of other parties are  
23 attached as being the filers. And we had been told in my  
24 office that this was supposed to have been fixed in a  
25 software upgrade in February. But it didn't fix it.



1                   And so my understanding, from talking to  
2   Ms. Griffin, is the problem's ongoing, everybody knows about  
3   it, and that we should just simply understand that there  
4   won't be any fix anytime soon, but that the court's aware of  
5   it.

6                   THE COURT: Ms. Griffin, I don't think I  
7   understand the problem sufficiently. Could you elaborate.

8                   MS. GRIFFIN: When one files in CM/ECF -- when  
9   the attorney files a document in CM/ECF, he or she would  
10   select the parties to whom that document would -- I mean, who  
11   they are representing as the attorney. And then it would  
12   populate as part of the docket entry. Then your document is  
13   attached. It's filed under the case file for you to see.

14                   What the -- we got upgraded. We moved into a  
15   new CM/ECF. Mandatory. We had to do that. And one of the  
16   problems, of which the Administrative Office is very well  
17   aware, is there's a glitch with cases that came in from older  
18   systems. And this, of course, happens to be an older case,  
19   so it came in from an older system.

20                   Now, if Ms. Schneider, for instance, were to  
21   file a document, it says she's filing it on behalf of all the  
22   parties. So since there's lots and lots of parties, they  
23   make for pretty voluminous case filings.

24                   The quality control department in the clerk's  
25   office goes through, after the filing is made, and cleans up

1 the docket sheet to reflect what they believe is the correct  
2 filing, which would be Ms. Schneider is filing on behalf of  
3 the United States, to remove all those extra parties. So  
4 that tomorrow you would look at the docket sheet, and the  
5 docket indication would be as correct as the clerk could make  
6 it.

7 But the initial filing comes through -- when the  
8 notice of electronic filing goes through to all of the other  
9 attorneys, it comes through, erroneously, that she is filing  
10 on behalf of all of the parties.

11 There is an MRN. It's part of the national  
12 system. We're hoping that it gets fixed in the next  
13 version. But we are not optimistic.

14 THE COURT: MRN?

15 MS. GRIFFIN: An MR is a -- it's a request  
16 for -- a modification request in a computer system.

17 THE COURT: Okay.

18 MS. GRIFFIN: And our local dictionary  
19 specialist is aware of it. And she will work on it. So if  
20 there's anything we can do locally, she's very good.

21 THE COURT: And who is that?

22 MS. GRIFFIN: Amber Freeman.

23 THE COURT: Oh, Amber.

24 MS. GRIFFIN: Yes.

25 THE COURT: Anything else, Ms. Schneider?

1 MS. SCHNEIDER: I have nothing else on item six.  
2 And I have nothing else on the agenda.

3 THE COURT: Okay.

4 Mr. DePaoli or Mr. Ferguson, do either of you  
5 have anything to add?

6 Does anybody else on the telephone have any  
7 other issues to address?

8 MR. HERSKOVITS: No, Your Honor.

9 THE COURT: I'm debating whether to set a time  
10 now for the next status conference or to wait and see what  
11 happens on Judge Reed's rulings. But I'm thinking that maybe  
12 we do another status conference at this time, if that's the  
13 usual procedure how it's done. Are they typically reset at  
14 the time of the last status conference?

15 MS. SCHNEIDER: Yes, Your Honor. What I might  
16 suggest is that the Court set a status conference perhaps six  
17 to eight weeks out, maybe six weeks. And perhaps it could  
18 simply be a telephone status conference with the Court, for  
19 the parties just to check in on where matters are and to  
20 notify the Court of how -- of what progress we've made at  
21 that point on the notification protocol and any other issues.

22 THE COURT: You know, if you do make progress on  
23 this notice by publication that I've been talking about, I'd  
24 almost like to have a telephonic status conference earlier on  
25 that. Because it seems to me that might be one of the things

1 that we should accomplish as soon as possible so we can  
2 complete that service list.

3 So if you, maybe, could move that to the head of  
4 the line of things to be done in this case. And then if you  
5 wanted to have that informal conference, we can do that by  
6 telephone, if you like. Of course, notify everybody if they  
7 wanted to participate. But just to discuss some preliminary  
8 issues on that, if that arises, I'd be happy to assist. And  
9 if that's causing problems or would not be productive, don't  
10 do it.

11 MS. SCHNEIDER: Yes, Your Honor. Thank you.

12 I think that's -- how we would proceed there  
13 is something I would want to talk to the other -- to the  
14 defendants about and to Mr. Williams. And if we could get  
15 back to the Court if we see that there's something we  
16 could do in a timely manner. Would that be how you would  
17 want to proceed?

18 THE COURT: I would. But, I think, let's go  
19 ahead and get a six-week date out because everyone's  
20 calendars are going to be filling up right away anyway.

21 THE CLERK: Your Honor, Wednesday May 9th, at  
22 1:30 p.m.

23 THE COURT: Does anybody have any problem with  
24 that date?

25 All right. The next status conference will be

1 Wednesday, May 9th, at 1:30 p.m.

2 And you are going to get me a revised order.  
3 First you're going to circulate it among the parties for  
4 the Sixteenth Report, Ms. Schneider?

5 MS. SCHNEIDER: Your Honor, could I do two  
6 orders; one just dealing with the Sixteenth Report, and one  
7 dealing with the other matters?

8 THE COURT: You know, just as you mentioned it,  
9 I think that's a good idea.

10 MS. SCHNEIDER: Okay.

11 THE COURT: Can we -- is this the existing  
12 proposed report?

13 MS. SCHNEIDER: It is, Your Honor. In fact,  
14 that could stand by itself.

15 THE COURT: I mean, the order?

16 MS. SCHNEIDER: Yes.

17 THE COURT: Can I just sign this order then?  
18 Does anybody have any problem with the language other than  
19 has been addressed already?

20 All right. I will go ahead and execute document  
21 1689 which will -- when filed, will be a different case  
22 number.

23 MR. DePAOLI: Your Honor, sorry. I thought that  
24 we were going to maybe change that to alert these parties to  
25 the fact that, although they're being dismissed now, there's

1 a chance that they might --

2 THE COURT: I think Ms. Schneider is going to do  
3 a letter to them. But do you want to change the language in  
4 this proposed order to say that although they have been  
5 dismissed, they are subject to being re-called?

6 MR. DePAOLI: This is the order that deals with  
7 the folks who have the non -- the transient non-community  
8 water systems. The letter was to deal with the --  
9 Ms. Rosachi and Walker General I think.

10 MS. SCHNEIDER: I would be fine to do that. I  
11 forgot about what Mr. DePaoli has suggested. What I can do  
12 is give the Court modified proposed rule -- order on Report  
13 Sixteen, that includes the suggestion that Mr. DePaoli had.  
14 And then deal with everything else in a separate order.

15 THE COURT: Does anybody else care to look at  
16 that revision before it gets filed?

17 Then, Ms. Schneider, I didn't hear any comment.  
18 Why don't you and Mr. DePaoli just work out the language and  
19 submit a revised proposed order that will just address that  
20 subject. Then you're going to do another proposed order that  
21 should be circulated among everybody about these other  
22 matters that we've addressed today.

23 MS. SCHNEIDER: Yes, Your Honor.

24 THE COURT: And I appreciate your doing that.  
25 Thank you very much for your assistance. That is very

1 helpful.

2 Is there anything else to come before the Court?

3 MS. SCHNEIDER: Will Your Honor also want to  
4 have a proposed agenda before the next status conference?

5 THE COURT: Do I want to have one? Yes.

6 MS. SCHNEIDER: Okay.

7 THE COURT: We will continue with the agenda  
8 before. And that's very helpful to me because I can become  
9 more familiar with the documents that are relevant to those  
10 agenda items. And it's my understanding that you work with  
11 other counsel to formulate that agenda?

12 MS. SCHNEIDER: Yes, Your Honor.

13 THE COURT: Does anyone have any problem with  
14 that? Because it does seem to be how things were done in the  
15 past. And we'll continue that protocol.

16 Now, is there anything else?

17 MS. SCHNEIDER: Nothing, Your Honor.

18 THE COURT: Very good. Thank you, all. Very  
19 informative hearing on a very interesting but complicated  
20 case. And I continue to try and get up to speed on it. Work  
21 in progress. We'll be in recess. Thank you.

22 (The proceedings were concluded at  
23 3:16 p.m.)

24 \* \* \*

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-o0o-

I certify that the foregoing is a correct  
transcript from the record of proceedings  
in the above-entitled matter.



3/23/12

Donna Davidson, RDR, CRR, CCR #318  
Official Reporter

Date